

In the Matter of the Application of)
)
HAWAIIAN ELECTRIC COMPANY, INC. for)
)
Approval of Rate Increases and Revised Rate)
Schedules and Rules, and for Approval and/or)
Modification of Demand-Side and Load)
Management Programs and Recovery of)
Program Costs and DSM Utility Incentives)
_____)

DOCKET NO. 04-0113

PUBLIC UTILITIES
COMMISSION

JAN 24 12:05 PM '05

FILED

MOTION FOR ENLARGEMENT OF TIME TO REQUEST PERMISSION TO
RESPOND TO MEMORANDA,

MOTION TO REQUEST PERMISSION TO RESPOND TO MEMORANDA
OPPOSING ROCKY MOUNTAIN INSTITUTE'S MOTION TO INTERVENE,

RESPONSE TO MEMORANDA BY THE CONSUMER ADVOCATE AND
HAWAIIAN ELECTRIC COMPANY, INC. OPPOSING ROCKY MOUNTAIN
INSTITUTE'S MOTION TO INTERVENE

&

CERTIFICATE OF SERVICE

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MOTION FOR ENLARGEMENT OF TIME TO REQUEST PERMISSION TO
RESPOND TO MEMORANDA OPPOSING ROCKY MOUNTAIN INSTITUTE'S
MOTION TO INTERVENE

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Rocky Mountain Institute (“RMI”) moves this Commission to enlarge the time period in which it may file a response to the Memorandum of Opposition filed by the Consumer Advocate (“CA”) on December 15, 2004 and the Memorandum of Opposition filed on December 15, 2004 by the Hawaiian Electric Company, Inc. (“HECO”).

RMI filed a timely Motion to Intervene on December 6, 2004. The CA and HECO filed Memoranda in Opposition to RMI’s motion on December 15, 2004. RMI received the CA and HECO Memoranda in Opposition on December 21, 2004. RMI did not file a Request for Permission to File a Response to the CA and HECO Memoranda within seven days of the filing of the memoranda opposing RMI’s Motion. On January 12, 2005 Commission counsel informed RMI that the Commission does not intend to rule on RMI’s Motion to Intervene until sometime after the period of time allowed for motions to intervene expires on January 24, 2005.¹

Rule 6-61-23 of the Rules of Practice and Procedure Before the Commission states, “Upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action on jurisdictional matters and where any order expressly provides that no enlargement shall be granted.”

¹ Personal Communication with Catherine Awakuni via electronic mail on January 12, 2005. “The Commissioners are still deliberating on whether to allow RMI to intervene or participate. They likely will rule after seeing all of the other motions to intervene (the deadline is the 24th, as you may remember). At the time that the Commission makes its determination of whether to allow RMI as a party or participant, it will also determine to what extent RMI may participate.”

² Rule 6-61-41 (c) of the Rules of Practice and Procedure Before the Commission state, “An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five days after being served the motion, or, if the hearing on the motion will occur less than five days after being served the motion, at least forty-eight hours before the time set for

In considering this Motion for Enlargement RMI urges the Commission to consider the following:

1. RMI was not able to file Request for Permission to Respond to the Memoranda or Motion to Enlarge time within the seven-day period of time allowed.² RMI received written notice of the Memoranda on December 21, 2004. RMI was not able to respond to the CA or HECO's Memoranda of Opposition within the prescribed period because RMI had already closed for the holiday season. As a small non-profit we did not have any staff available to respond. After returning from the holiday break, RMI had surpassed the seven-day period of time allowed. However, upon learning that the Commission was not ruling on RMI's Motion to Intervene until the period to file Intervention ended, RMI thought that it would be beneficial to creating a more complete record for this docket if RMI filed Motion to Enlarge, Motion to Request Permission to Respond and a Response. RMI did not respond due to carelessness, inattention, or willful disregard of the court's process.

2. The Commission has not ruled on RMI's Motion to Intervene.

3. If the Commission grants RMI's Motion for Enlargement it would not delay the proceedings of the docket. Commission counsel has informed RMI that the

hearing, unless otherwise ordered by a chairperson." Rule 6-61-21 (e) of the Rules of Practice and Procedure Before the Commission state, "Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of a notice or other document upon the party and the notice or document is served upon the party by mail, two days shall be added to the prescribed period." Thus, RMI had seven days to respond to the Memoranda of Opposition filed by the CA and HECO.

Commission does not intend to rule because the time to submit Motions to Intervene or Participate has not expired.

A hearing is not requested on this motion.

DATED: Kailua-Kona, Hawaii, this 21st day of January 2005.

Rocky Mountain Institute

A handwritten signature in black ink, appearing to read 'Y. Datta', is written over a horizontal line.

Kyle Datta

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MOTION TO REQUEST PERMISSION TO RESPOND TO THE CONSUMER
ADVOCATE'S MEMORANDUM OF OPPOSITION AND THE HAWAIIAN
ELECTRIC COMPANY INC.'S MEMORANDUM OF OPPOSITION BY ROCKY
MOUNTAIN INSTITUTE

E. KYLE DATTA
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Rocky Mountain Institute ("RMI") moves the Commission to grant RMI permission to respond to the Consumer Advocate's ("CA") Memorandum of Opposition and the Hawaiian Electric Company Inc. ("HECO")'s Memorandum of Opposition.

RMI filed a timely Motion to Intervene on December 6, 2004. The CA and HECO filed Memoranda in Opposition to RMI's motion on December 15, 2004. RMI received the written notice of the memoranda in the mail on December 21, 2004. RMI did not file a request for permission to file a response to the CA and HECO Memoranda within seven days of the filing of the memoranda opposing RMI's Motion. On January 12, 2005 Commission counsel informed RMI that the Commission does not intend to rule on RMI's Motion to Intervene until sometime after the period of time allowed for motions to intervene expires on January 24, 2005.³ RMI is also filing a concurrent Motion for Enlargement of Time to request permission to respond to memoranda opposing Rocky Mountain Institute's Motion to Intervene with this Motion on January 21, 2005.

1. The grounds for the motion are that RMI needs to clarify several issues raised and assertions made in the memoranda opposing RMI's Motion to Intervene. In its response RMI intends to address the concerns brought up in the CA and HECO's Memoranda of Opposition, including RMI's basis for standing in the


³ Personal Communication with Catherine Awakuni via electronic mail on January 12, 2005. "The Commission will consider all filings relating to this matter, like, for example, others writing to express their opinion as to whether RMI should be admitted entry into this docket. However, if this filing comes from RMI in response to the opposition filed, RMI should request leave to respond, since the rules (see section 6-61-41) do not contemplate responses. The Commission can then determine whether to grant the request to respond, and will give the materials in support the appropriate amount of weight."

docket, RMI's ability to address DSM issues as a party versus as a participant without standing as a full party in this docket and to clarify the extent of RMI's willingness to limit its intervention in the docket as suggested in HECO's opposing memorandum, and the capacity of Kyle Datta in regard to RMI's Motion to Intervene. If RMI is given the opportunity to respond, it will help to create a more complete record for this docket.

2. The relief sought is that the Commission would grant RMI permission to respond to the concerns addressed in CA's Memorandum of Opposition and HECO's Memorandum of Opposition.
3. A hearing is not requested on the motion.

DATED: Kailua-Kona, Hawaii, this 21st day of January 2005.

Rocky Mountain Institute

A handwritten signature in black ink, appearing to read 'KD', is written over a horizontal line.

Kyle Datta

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RESPONSE TO THE CONSUMER ADVOCATE'S MEMORANDUM OF
OPPOSITION AND THE HAWAIIAN ELECTRIC COMPANY INC.'S
MEMORANDUM OF OPPOSITION BY ROCKY MOUNTAIN INSTITUTE

E. KYLE DATTA
Managing Director of Research and Consulting
Rocky Mountain Institute
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The main concerns that Rocky Mountain Institute ("RMI") would like to address in this response are 1) RMI's basis for standing in the docket, 2) the ability of RMI to address DSM issues by other means than intervening in this docket and 3) the level of participation that RMI requests in this docket, 4) the capacity of RMI Managing Director of Research and Consulting Kyle Datta in regard to RMI's Motion to Intervene.

RMI's Basis for Standing

Hawaiian Electric Company, Inc. ("HECO") stated in its Memorandum of Opposition that RMI did not establish the proper criteria to be granted standing, or RMI's requested Intervener status. RMI believes that it is an affected party, and has standing to be an Intervener in this docket. RMI has grounds for standing in this docket for several reasons.

First, RMI has employees that work in many locations, including Honolulu, Hawaii. RMI employs Susan Asam as a paid intern who consumes electricity in the course of her work for RMI and is compensated by RMI for expenses of conducting RMI business, including consumption of electricity. RMI is thus affected by the outcome of this docket which will decide electric rates and opportunities for participation in HECO's DSM programs.

Second, RMI will be affected by the outcome of this docket because RMI is a customer of Hawaii Electric Light Company, Inc. ("HELCO"). RMI's branch office is located at 74-5617 Pawai Place, Suite 201, Kailua-Kona, HI. HELCO will be affected by the outcome of this docket because it has been agreed by stipulation between HECO and the Consumer Advocate and decided by Order No. 1920, dated November 15, 2001, and by Order No. 20392, dated August 26, 2003 that HECO's affiliates, including HELCO,

“will take the necessary steps to implement any changes ordered or approved by the commission in HECO’s next rate case.” (Order No. 19020 at page 6) Docket No. 04-0113, the docket in which this response is file and the docket to which RMI has moved to intervene is “HECO’s next rate case” referred to in the stipulation and orders cited above. RMI is thus affected by the outcome of this proceeding.

Third, RMI is financially affected by the outcome of this docket because of the nature of its business. RMI engages in the business of energy consulting, including the field of DSM, in the State of Hawaii including the Island of Oahu and elsewhere in many places all over the world. This docket will decide several issues, including the nature, scope and status of utility DSM programs which will affect RMI’s consulting business opportunities in the State of Hawaii. RMI’s interest as a provider of energy and DSM consulting services is different than that of the general public.

Ability to Address DSM Issues by Other Means Than Intervention in this Docket

The Consumer Advocate asserts in it’s Memorandum of Opposition that RMI should have participated in the other DSM dockets if it was interested in the outcome of DSM on the Islands. However, some of the DSM programs proposed in this docket have never been the subject of a prior DSM program approval docket. Further, RMI had not opened a branch office in Hawaii prior to 2003, and thus not involved in the prior dockets. The DSM mechanisms contemplated in this docket for recovering lost margins and shareholder incentives have never been proposed anywhere prior to the application filed in this docket. There is no way that RMI could have participated in these issues in other prior dockets. Also, even those issues considered in other prior DSM dockets have been made part of the application in this docket are therefore ripe to be decided in this

docket, regardless or in addition to any consideration or decision in other dockets. RMI's opportunity to address these issues by which it is affected is therefore in this docket.

Limiting the Level of Intervention or Participation in this Docket

RMI believes that it has a sound basis for standing as an intervener in this docket. RMI's interests and objectives could be met, however, with limitation to address only the specific issues pertaining to the proposed DSM programs and the DSM program financial recovery mechanisms. RMI does not need formal standing as an intervener regarding the many other issues in this docket that are only the subject of the remainder of the rate case.

Furthermore, as long as RMI has an opportunity to fully participate in the development of the evidentiary record in this docket on the specific issues identified above, RMI could participate in the docket as a participant without formal standing as an intervener. By full participation in the development of the evidentiary record RMI means fully participating, within the scope of the specific identified issues, in discovery, filing testimony that will become part of the evidentiary record, cross examination of witness, filing briefs, motions and pleadings and participation in the development of any stipulated proposed pre-hearing order and schedule of proceedings. Given RMI's expertise in DSM regulatory issues, the public interest would be well served by having RMI's participation at this level.

Capacity of RMI Managing Director of Research and Consulting Kyle Datta

RMI is the Movant in RMI's Motion to Intervene. Employee Kyle Datta is the primary person to appear in this docket for the purposes of fully participating in the development of an evidentiary record, as explained above. However, in the event that Kyle Datta is unavailable to participate in the docket, or another employee of RMI would

be better qualified to testify in the docket, RMI would like to be able to use any RMI employee in the docket proceedings.

In conclusion, RMI would like the Commission to consider this response when deliberating on RMI's Motion to Intervene. RMI is an affected party in this docket and meets the criteria to be granted full Intervener status in this docket, however, RMI is not adverse to having limited participation in this docket, contingent upon being able to fully participate in the creation of an evidentiary record regarding DSM. Finally, RMI Managing Director of Research and Consulting Kyle Datta is the primary employee representing RMI in this docket.

DATED: Kailua-Kona, Hawaii, this 21st day of January 2005.

Rocky Mountain Institute

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Kyle Datta

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CERTIFICATE OF SERVICE

I hereby certify that the original and eight copies of the Motion for Enlargement of Rocky Mountain Institute; the Motion to Request Permission to Respond to the Consumer Advocate's Memorandum of Opposition and the Hawaiian Electric Company's Memorandum of Opposition by Rocky Mountain Institute; and the Response to the Consumer Advocate's Memorandum of Opposition and the Hawaiian Electric Company's Memorandum of Opposition by Rocky Mountain Institute; and two more copies of the same were, respectively, duly served on January 21, 2005 by mail, postage prepaid, and properly addressed to the following:

Carlito Caliboso, Chair
Public Utilities Commission
465 S. King St. Suite 103
Honolulu, HI 96813

Acting Executive Director, John E. Cole
Department of Commerce and Consumer Affairs
Division of Consumer Advocacy
335 Merchant Street
Room 326
Honolulu, HI 96813

I hereby further certify that copies of said Motion for Enlargement of Rocky Mountain Institute; the Motion to Request Permission to Respond to the Consumer Advocate's Memorandum of Opposition and the Hawaiian Electric Company's Memorandum of Opposition by Rocky Mountain Institute; and the Response to the Consumer Advocate's Memorandum of Opposition and the Hawaiian Electric Company's Memorandum of Opposition by Rocky Mountain Institute were duly served on January 21, 2005 by mail, postage prepaid, one copy of the same addressed to each of the following:

Thomas W. Williams, Jr., Esq.
Peter Y. Kikuta., Esq.
Goodsill Anderson Quinn & Stifel
Hawaiian Electric Company
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, HI 96813

William A. Bonnet
Vice-President, Governmental and Community Affairs
Hawaiian Electric Company Inc
P.O. Box 2750
Honolulu, HI 96840-0001

Patsy Nananbu
Director – Regulatory Affairs
Hawaiian Electric Company
P.O. Box 2750
Honolulu, HI 96840-0001

DATED: Kailua-Kona, Hawaii, this 21st day of January 2005.

Rocky Mountain Institute

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Kyle Datta